

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ROBERT LEE CHILDRESS,

Petitioner,

v.

Case Number: 10-cv-11998
Honorable Denise Page Hood

RAYMOND BOOKER,

Respondent.

**OPINION AND ORDER DENYING NOTICE OF APPEAL AND DENYING AN
APPLICATION TO PROCEED ON APPEAL *IN FORMA PAUPERIS***

This is a habeas case under 28 U.S.C. § 2254, which was closed on May 27, 2010. On May 18, 2010, Petitioner Robert Childress filed a *pro se* petition claiming he was incarcerated in violation of his constitutional rights. The Court dismissed the petition as duplicative. *See* Order Dismissing Case, filed May 27, 2010. Pending before the Court is Petitioner's "Notice of Appeal" [Docket No. 7, filed on June 11, 2010], which the Court will construe as a motion for a certificate of appealability. For the reasons that follow, the motion will be denied. The Court will also deny Petitioner an application for leave to proceed on appeal *in forma pauperis*, as any appeal would be frivolous.

Before Petitioner can appeal the Court's decision dismissing his habeas case as duplicative, a certificate of appealability (COA) must issue. A COA may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In *Slack v. McDaniel*, 529 U.S. 473 (2000), the United States Supreme Court held that where the petition is dismissed on procedural grounds, petitioner must show "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been

resolved in a different matter or that the issues presented were ‘adequate to deserve encouragement to proceed further .’” *Id.* at 483-84 (quoting *Barefoot v. Estelle*, 463 U.S. 880, 898 n. (1983)).

For the reasons stated in the May 27, 2010 order, reasonable jurists would not debate the Court’s ruling.

IT IS ORDERED that a COA is denied.

IT IS FURTHER ORDERED that the Court denies Petitioner an application for leave to proceed on appeal *in forma pauperis*.

S/Denise Page Hood
Denise Page Hood
United States District Judge

Dated: July 2, 2010

I hereby certify that a copy of the foregoing document was served upon Robert Childress, Reg. No. 365065, Ryan Correctional Facility, 17600 Ryan Rd., Detroit, MI 48212 and counsel of record on July 2, 2010, by electronic and/or ordinary mail.

S/William F. Lewis
Case Manager